APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 82-297

GEORGE T. DAGGETT,
Plaintiff,
v.
IRWIN I. KIMMELMAN, ETC., *et al.*,
Defendants.

and

Civil Action No. 82-388

EDWIN B. FORSYTHE, *et al.*,
Plaintiffs,
v.
THOMAS H. KEAN, ETC., *et al.*,
Defendants.

[Filed Mar. 3, 1982]

OPINION

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Proposed Defendant-Intervenor *Pro Se*

Before: GIBBONS, Circuit Judge; FISHER, Chief District Judge; BROTMAN, District Judge.

FISHER, Chief District Judge.

These consolidated cases bring under attack the constitutionality of P.L. 1982, c.1, which creates districts for the election of United States representatives from New Jersey. Plaintiffs are concerned citizens, representatives of interested groups, incumbent Republican members of Congress, and other individuals with various interests. The defendants are the Governor, Attorney General and Secretary of State of New Jersey.

We have permitted the incumbent Democratic members of Congress and other concerned persons to intervene as defendants. We have reserved decision on the motions to intervene of still others. Because of the decision here, their status will remain unchanged.

This three-judge court was convened pursuant to 28 U.S.C. § 2284(a). The relief sought includes a declaration that P.L. 1982, c.1 is unconstitutional and an injunction against the state officers to prevent them from implementing the Act by proceeding with the primary election insofar as it relates to candidates for the House of Representatives.

At a hearing on February 19, 1982, the court directed the parties to take depositions, summarize the testimony,

file affidavits and submit exhibits for final hearing on February 26, 1982. Between these dates, all parties moved for summary judgment pursuant to rule 56 of the Federal Rules of Civil Procedure.

At final hearing, the parties agreed that if the motions for summary judgment were denied, they would have no further proofs to advance other than what then comprised the record. Because we prefer to decide the matter on the application for injunctive relief on the entire record, rather than by summary judgment, those motions are denied. The application for a preliminary injunction is consolidated with plaintiff's demand for a permanent injunction into a final hearing pursuant to Fed. R. Civ. P. 65(a). Counterclaims advanced on behalf of some of the parties are dismissed, either because this disposition of the case renders them moot, or because they do not constitute a cause of action.

The 1980 decennial census recorded a population of 7,364,826 for the State of New Jersey. Heretofore, New Jersey had 15 congressional districts constituted by this court in *David v. Cahill*, 342 F. Supp. 463 (D.N.J. 1972). Pursuant to the requirements of 2 U.S.C. § 2a(b), the Clerk of the United States House of Representatives has notified the Governor of the State of New Jersey that, on the basis of the 1980 decennial census, the number of representatives to which the state is entitled has been decreased from fifteen to fourteen. This notification has rendered the present apportionment of congressional districts unconstitutional.

After this notification, it became the duty of the New Jersey legislature to reapportion the fourteen congressional districts in conformity with the mandate of art. I, § 2 of the United States Constitution and the standards of *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), and the cases that followed. On the day he left office, former Governor Brendan T. Byrne signed a bill sponsored jointly by Senator Matthew Feldman and Assemblyman

Byron M. Baer which then became P.L. 1982, c.1. See Appendix A for Senate Bill 711, which became P.L. 1982, c.1, and a map of the districts as drawn by the Act. This litigation followed.

The facts are clear and, in a general sense, not really disputed. They emerge from the exhibits, the affidavits, and especially from the testimony of Assemblyman Christopher Jackman, Speaker of the 199th Assembly and Speaker *pro tem* of the 200th; Senator Matthew Feldman, President *pro tem* of the Senate; Assemblyman Alan J. Karcher, Speaker of the 200th Assembly; and Assemblyman Richard Zimmer.

The story really begins on August 7, 1981, when Ernest C. Reock, Jr., sent a "model" redistricting proposal to the leadership of the legislature and the Governor. On August 11, 1981, Reock sent the plan to all the members of the legislature. Mr. Reock was, and is, a research professor at Rutgers University since 1950 and Director of the Bureau of Government Research at Rutgers University since 1960. The Bureau of Government Research has three principal functions: to conduct research on problems of state and local government in New Jersey, to develop and to conduct training programs for local government officials in New Jersey, and to provide technical assistance to state agencies and officers, as well as to those members of the public interested in the problems of government.

This plan or proposal, as amended, set forth fourteen congressional districts with an overall absolute range of deviation of 1,556 people and the overall relative range of 0.296%. By contrast, P.L. 1982, c.1, the present law, has an overall absolute range of deviation of 3,674 people and an overall relative range of deviation of 0.6984%.

The Reock proposal prompted a remarkable reply from then Speaker of the Assembly Jackman. The letter is set forth in its entirety as Appendix B. This letter in-

formed Professor Reock that redistricting was the business of the legislature and that the partisan majority had an interest in redistricting and would not subjugate its concerns. He added that Professor Reock's plan had no chance of adoption.

There ensued thereafter a series of meetings between Democratic legislators, congressmen, and other interested persons to discuss the form and content of a redistricting bill. There were also contacts made with some Republican office-holders. Obviously, staff people were at work to develop a plan.

When the 200th legislature convened, a number of redistricting bills were introduced until at last P.L. 1982, c.1 was passed and signed by the Governor.

The deposition testimony indicates that the Democratic leadership was concerned with certain criteria. Assembly Speaker Karcher was interested in minimum deviations. In fact, he stated he was not interested in any bill with a deviation in excess of one percent. His further aims were to protect minority interests, the preservation of cores of pre-existing districts and the preservation of municipal boundary lines. He further indicated that he was interested in preserving the influence in Congress of certain senior Democratic incumbents.

Senator Feldman, who sponsored the bill, indicated that he desired numerical equality as near to zero as possible. As additional priorities, he emphasized the importance of protection of black voters and a desire to keep counties, especially Bergen County, intact as far as possible.

Every congressional redistricting plan must be measured against the requirement of art. I, § 2: "The House of Representatives shall be composed of Members chosen . . . by the People of the several States . . . ." In *Wesberry v. Sanders*, 376 U.S. 1 (1964), the Court held that "the command of Art. I, § 2 . . . means that as

nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." 376 U.S. at 7-8 (footnote omitted).

The "as nearly as is practicable" standard was discussed in *Kirkpatrick v. Preisler*, 394 U.S. 526. In that case, the Court struck down a Missouri redistricting plan which contained a 5.97% total deviation. Missouri's primary argument was that the population variances were so small that they should be considered *de minimus*. The Court, however, ruled otherwise.

> We reject . . . [the] argument that there is a fixed numerical or percentage population variance small enough to be considered *de minimus* and to satisfy without question the "as nearly as practicable" standard. . . . [Rather], the . . . standard requires that the State make a good faith effort to achieve precise mathematical equality. . . . Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.

394 U.S. at 530-31 (citation omitted). See also *Wells v. Rockefeller*, 394 U.S. 542 (1969).

In *White v. Weiser*, 412 U.S. 783 (1973), the Court declared a Texas plan with a total deviation of 4.13% unconstitutional. After failing to demonstrate that the population variances were unavoidable or justified, the State argued that *Kirkpatrick* and *Wells* should be modified to permit small population variances among congressional districts without requiring the State to justify them. However, the Court ruled that it was "not inclined to disturb *Kirkpatrick* and *Wells*." 412 U.S. at 793.

Finally, in *Chapman v. Meier*, 420 U.S. 1 (1975), the Court held that minor population deviations in state legislative districts do not establish a *prima facie* constitu-

tional violation, "[a]s contrasted with congressional districting, where population equality appears now to be the pre-eminent, if not the sole, criterion on which to adjudge the constitutionality, ..." 420 U.S. at 23 (citations omitted).

P.L. 1982, c.1 can withstand constitutional attack only if the population variances "are unavoidable despite a good-faith effort to achieve absolute equality, or . . . [if] justification is shown." *Kirkpatrick*, 394 U.S. at 531. It is clear that the .6984% population deviation of P.L. 1982, c.1 is not unavoidable. The legislature had the option of choosing from several other plans with a lower total deviation than .6984%. For example, the Reock plan contained a total deviation of .3250%, and only .2960% after it was amended. The DiFrancesco plan, S-3547, introduced on January 4, 1982, had a total deviation of .1253%. The Hardwick plan, A-3817, introduced on January 12, 1982, contained a total deviation of .4515%. The Bennett plan, A-614, and the Kavanaugh plan, A-615, although introduced one day after P.L. 1982, c.1 was signed into law, contain total deviations of .1269% and .0293%, respectively.

In devising a redistricting plan, the Assembly leadership was concerned with drawing districts of equal population. However, this constitutional requirement was viewed as merely aspirational, with appropriate recognition to be given to such factors as the preservation of cores of pre-existing districts, the preservation of municipal boundary lines, and the preservation of the districts of incumbent Democratic Congressmen. Likewise, the Reock plan was rejected because it did not reflect the leadership's partisan concerns. Furthermore, the sponsor of P.L. 1982, c.1 stated on the floor of the Assembly that there cannot be a plan of precise population equality and that it was necessary to balance that factor against other criteria.

The Senate leadership viewed the issue in similar terms. While acknowledging that plans with lower total deviations than P.L. 1982, c.1 existed, the leadership believed that population equality was not the only standard.

Defendant-intervenors contend nevertheless that the population deviations in P.L. 1982, c.1 are justified by the legislature's goal of avoiding the dilution of minority voting strength. The plan makes a conscious effort, defendants argue, to preserve the Tenth District with a configuration and racial composition that makes it probable that a person chosen by black voters will be elected in that district. We need not decide whether this interest is sufficient to justify a deviation from population equality. First, defendant-intervenors have not attempted to demonstrate, nor can they demonstrate, any causal relationship between the goal of preserving minority voting strength in the Tenth District and the population variances in the other districts. The Fourth District contains the greatest variance in excess of the "ideal" district: 1,413 people, or .2666%. The Sixth District contains the greatest variance below the ideal district: 1,290 people, or .2452%. We find that the goal of preserving minority voting strength in the Tenth District is not related in any way to the population deviations in the Fourth and Sixth Districts.

Secondly, it is difficult to reconcile the goal of preserving minority voting strength with P.L. 1982, c.1's treatment of the City of Orange. Orange, a city with a high concentration of minority groups, is placed not in the Tenth District, but in the Eleventh. Defendant-intervenors argue that Orange was left out of the Tenth District so that Irvington and Hillside, towns with an alleged substantial immigration of black residents, could be included. However, projected population shifts may

be considered in drawing a redistricting plan only when "these shifts can be predicted with a high degree of accuracy, ..." *Kirkpatrick*, 394 U.S. at 535. Furthermore, "[f]indings as to population trends must be thoroughly documented and applied throughout the State in a systematic, not an *ad hoc*, manner." *Id.* Defendant-intervenors, having failed to document these expected population shifts, fall far short of this standard.

Defendant-intervenors argue that the "as nearly as practicable" standard is satisfied when the population variation is less than the statistical imprecision of the census. Under this reasoning, defendant-intervenors conclude that the .6984% total deviation of P.L. 1982, c.1 is insignificant and should be considered the functional equivalent of mathematical equality. We reject such an approach. Whatever margin of error was present in the 1980 decennial census, there were similar limitations in the 1960 and 1970 decennial census' when *Kirkpatrick* and *White* were decided. Despite this factor, the Court could not have spoken more clearly. "We reject . . . [the] argument that there is a fixed numerical or percentage population variance small enough to be considered *de minimus* and to satisfy without question the 'as nearly as practicable' standard." *Kirkpatrick*, 394 U.S. at 530.

We conclude that P.L. 1982, c.1 does not comply with the mandate of art. I, § 2 and the standards of *Kirkpatrick* and *White*. Judgment will be entered declaring P.L. 1982, c.1 unconstitutional and enjoining the defendant state officers from conducting primary or general congressional elections under its terms. The legislature will have until March 22, 1982 to enact a new constitutional plan for reapportionment. If one is not forthcoming, this court will convene on March 26, 1982 to undertake further proceedings.

March 3, 1982.

GIBBONS, *Circuit Judge*, dissenting.

I join fully in the court's findings of fact and in the rulings on motions. In particular, I agree that the only effort made by the Democratic legislative leadership to comply with *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969) was Mr. Karcher's instruction that no plan would be considered which had a population deviation greater than one per cent, and that the minorities' concentration justification for the deviations which were produced must on this record be rejected as pretextual. Moreover I concede that the majority's conclusion of law, that P.L. 1982, c.1 is unconstitutional, is a quite plausible interpretation of the relevant Supreme Court authorities.[1] Nevertheless, I dissent.

I recognize that in *Kirkpatrick v. Preisler*, *supra*, the court *said* that it rejected the argument that there is a fixed numerical or percentage population variance small enough to be considered *de minimus*. In the same paragraph, however, the Court acknowledged that some population variances could be justified. Since, literally, it would be possible to achieve equal number districts, plus or minus one, by disregarding municipal or even census tract lines, the Court must have meant that some considerations other than numerical equality could be relied upon in justification for such variances. Moreover there is no suggestion in the governing cases that even blunt political considerations such as motivated the New Jersey legislative majority are not legitimate considerations.

We must keep in mind that while for congressional redistricting the basic rule, derived from Article 1, Section 2 of the Constitution, is districts of equal population, the purpose of that rule is to prevent the phenomenon of voters in smaller congressional districts hav-

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[1] White v. Weiser, 412 U.S. 783 (1973); Kirkpatrick v. Preisler, 394 U.S. 526 (1969); Wells v. Rockefeller, 394 U.S. 542 (1969). *See*, Chapman v. Meier, 420 U.S. 1, 23 (1975).

ing voting power disproportionate to the voting power of voters in larger districts. The rule requiring apportionment into districts of equal population is itself only an imprecise means to that end, for it is applied not to actual population in each district from time to time, but to population as determined in the decennial census. In any election the population of each district may vary from the ideal. During the course of ten years the variance might be quite large, but the districts determined on the basis of census equality still would be valid. We know, moreover, that the census, while it is amazingly accurate, does not achieve one hundred percent accuracy. It has been estimated that for the 1970 census the margin of error resulting from undercounting may have been as much as 2.5% nationally and 2.6% in New Jersey. *See*, Bureau of the Census, Current Population Reports, Special Studies, Coverage of Population in the 1970 Census and Some Implications for Public Programs (August 1975).

We are not dealing with an equal protection problem, for we know from the cases dealing with apportionment for state legislatures and local governmental units that deviations in excess of those in P.L. 1982, c.1 are tolerable. *E.g.*, *Chapman v. Meier*, 420 U.S. 1 (1975). Thus the *Kirkpatrick v. Preisler* rule is one implied from the clause in Article I of the constitution apportioning representation in the House of Representatives in accordance with the constitutionally decennial census. The basic purpose of that clause is to prevent disparities in representation among the states. Even for that purpose the constitutionally mandated decennial census measurement is imprecise. It is no less so when the same measurement is used for districting within a state.

It is conceivable that the Court would hold that only such imprecision as is built into the constitutional standard is tolerable, and no more. The Court has not done so. Instead it has suggested that some justification for

variances may be advanced. It seems to me, therefore, that the rule must be that variances may be justified which do not achieve statistically significant dilutions of the relative representation of voters in larger districts when compared with that of voters in smaller districts. I would read the *de minimus* language in *Kirkpatrick v. Preisler* as a prohibition against toleration of *de minimus* dilutions of relative representation rather than as a prohibition against toleration of *de minimus* population variances which have no statistically relevant effect on relative representation. A plus-minus deviation of 0.6984% falls within the latter category.

The apportionment map produced by P.L. 1982, c.1 leaves me, as a citizen of New Jersey, disturbed. It creates several districts which are anything but compact, and at least one district which is contiguous only for yachtsmen. While municipal boundaries have been maintained, there has been little effort to create districts having a community of interests. In some districts, for example, different television and radio stations, different newspapers, and different transportation systems serve the northern and southern localities. Moreover the harshly partisan tone of Speaker Christopher Jackman's letter to Ernest C. Reock, Jr. is disedifying, to say the least. It is plain, as well, that partisanship produced artificial bulges or appendages of two districts so as to place the residences of Congressmen Smith and Courter in districts where they would be running against incumbents. But none of my concerns as a citizen are relevant to the standard which I must apply as a judge. Indeed the same partisan ends could have been achieved by tinkering with census tracts rather than whole municipalities thereby reducing population deviations to close to zero.

This is not a case in which district lines were drawn in order to disadvantage racial minorities or religious groups. Republican members of the House of Representa-

tives are not, at least to date, considered to be members of a discrete and insular minority. Thus the only relevant constitutional consideration, in the absence of a much needed federal statute imposing standards for congressional districting, is the achievement of equal representation for more or less equal numbers of persons. A deviation in population between the largest and the smallest district of 0.6984% is smaller than the recognized margin of undercounting in the census. I would hold that achievement of that small a deviation demonstrates as a matter of law a good faith effort to achieve equal member districts.

APPENDIX A

SENATE, NO. 711

STATE OF NEW JERSEY

INTRODUCED JANUARY 12, 1982

By Senator FELDMAN

(Without Reference)

AN ACT creating districts for the election of members to the House of Representatives of the United States of America to serve in the 98th Congress and each subsequent Congress, and repealing sections 1 and 2 of P.L. 1966, c. 156 and P.L. 1981, c. 561.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Congressional District Act for the State of New Jersey (1982)."

2. For the purpose of electing members of the House of Representatives of the United States of America from the State of New Jersey to serve in the 98th Congress and each subsequent Congress, the State of New Jersey shall be divided into the following 14 single-member districts:

First. The county of Gloucester and that portion of the county of Camden embracing Audubon, Audubon Park, Barrington, Bellmawr, Berlin, Berlin township, Brooklawn, Camden, Chesilhurst, Clementon, Gibbsboro, Gloucester city, Gloucester township, Haddonfield, Haddon Heights, Hi-Nella, Laurel Springs, Lindenwold, Mag-

nolia, Mount Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Tavistock, Voorhees, Waterford, Winslow, and Woodlynne.

Second. The counties of Salem, Cumberland, Cape May, and Atlantic that pc tion of the county of Ocean embracing Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Little Egg Harbor, Long Beach, Ocean, Ship Botton, Stafford, Surf City, Tuckerton, and that portion of the county of Burlington embracing Bass River, Tabernacle and Washington.

Third. That portion of the county of Monmouth embracing Aberdeen, Allenhurst, Asbury Park, Atlantic Highlands, Avon, Belmar, Bradley Beach, Deal, Eatontown, Englishtown, Fair Haven, Hazlet, Highlands, Interlaken, Keansburg, Keyport, Loch Arbour, Long Branch, Manalapan, Manasquan, Matawan, Middletown, Monmonth Beach, Neptune city, Neptune township, Oceanport, Ocean, Red Bank, Sea Bright, Sea Girt, South Belmar, Spring Lake, Spring Lake Heights, Union Beach, West Long Branch, that portion of the county of Ocean embracing Bay Head, Brick, Lakewood, Mantoloking, Point Pleasant Beach, Point Pleasant, and that portion of the county of Middlesex embracing Old Bridge.

Fourth. That portion of the county of Burlington embracing Beverly, Bordentown city, Bordentown township, Burlington city, Burlington township, Chesterfield, Cinnaminson, Delanco, Delran, Edgewater Park, Florence, Mansfield, Maple Shade, Palmyra, Pemberton borough, Pemberton township, Riverside, Riverton borough, Springfield, Willingboro, Wrightstown and Fieldsboro, that portion of the county of Camden embracing Merchantville and Pennsauken, that portion of the county of Mercer embracing East Windsor, Ewing, Hamilton, Highstown, Lawrence, Trenton, Washington and West Windsor, that portion of the county of Middlesex embracing Plainsboro and that portion of the county of

Monmouth embracing Allentown, Roosevelt and Upper Freehold.

Fifth. That portion of the county of Bergen embracing Allendale, Closter, Cresskill, Demarest, Harrington Park, Haworth, Ho-ho-kus, Mahwah, Midland Park, Montvale, Northvale, Old Tappan, Oradell, Park Ridge, Ramsey, Ridgewood, River Edge, River Vale, Rockleigh, Saddle River, Upper Saddle River, Waldwick and Wyckoff, that portion of the county of Hunterdon embracing Alexandria, Bethlehem, Bloomsbury, Delaware, East Amwell, Flemington, Franklin, Frenchtown, Hampton, Holland, Kingwood, Lambertville, Milford, Raritan, Stockton, Union, West Amwell and that portion of the county of Mercer embracing Hopewell, Hopewell township and Pennington, that portion of the county of Morris embracing Boonton, Boonton township, Denville, Jefferson, Mine Hill, Montville, Mount Arlington, Mount Olive, Randolph and Roxbury, that portion of the county of Passaic embracing Ringwood and West Milford, that portion of the county of Sussex embracing Branchville, Frankford, Hampton, Lafayette, Montaque, Sandyston, Stillwater, Sussex, Vernon, Walpack and Wantage and that portion of the county of Warren embracing Alpha, Belvidere, Blairstown, Franklin, Greenwich, Hackettstown, Hardwick, Harmony, Hope, Knowlton, Liberty, Lopatcong, Oxford, Pahaquarry, Phillipsburg, Pohatcong, Washington, Washington township and White.

Sixth. That portion of the county of Middlesex embracing Carteret, East Brunswick, Edison, Helmetta, Highland Park, Metuchen, Milltown, New Brunswick, Perth Amboy, Piscataway, Sayerville, South Amboy, South Plainfield, South River, Spotswood and Woodbridge and that portion of the county of Union embracing Linden, Rahway and Winfield.

Seventh. That portion of the county of Mercer embracing Princeton, Princeton township, that portion of

the county of Middlesex embracing Cranbury, Dunellen, Jamesburg, Middlesex, Monroe, North Brunswick and South Brunswick, that portion of the county of Monmouth embracing Freehold, Freehold township, Marlboro and Millstone, that portion of the county of Somerset embracing Bound Brook, Franklin, Manville, Millstone, North Plainfield, Rocky Hill and South Bound Brook and that portion of the county of Union embracing Clark, Cranford, Elizabeth, Fanwood, Garwood, Plainfield, Roselle, Roselle Park, Scotch Plains and Westfield.

Eighth. That portion of the county of Bergen embracing Franklin Lakes, Garfield, Oakland and Wallington, that portion of the county of Morris embracing Butler, Dover, Kinnelon, Lincoln Park, Pequannock, Riverdale, Rockaway, Rockaway township, Victory Gardens and Wharton and that portion of the county of Passaic embracing Bloomingdale, Clifton, Haledon, Hawthorne, North Haledon, Passaic, Paterson, Pompton Lakes, Prospect Park, Wanaque and Wayne.

Ninth. That portion of the county of Bergen embracing Alpine, Bergenfield, Bogota, Carlstadt, Cliffside Park, Dumont, East Rutherford, Edgewater, Elmwood Park, Emerson, Englewood, Englewood Cliffs, Fair Lawn, Fairview, Fort Lee, Glen Rock, Hackensack, Hasbrouck Heights, Hillsdale, Leonia, Lodi, Maywood, Moonachie, New Milford, Norwood, Paramus, Ridgefield Park, Rochelle Park, Rutherford, Saddle Brook, South Hackensack, Teaneck, Tenafly, Teterboro, Washington, Westwood, Woodcliff Lake and Wood-Ridge.

Tenth. That portion of the county of Essex embracing East Orange, Glen Ridge, Irvington, Newark and South Orange, that portion of the county of Union embracing Hillside, and that portion of the county of Hudson embracing Harrison.

Eleventh. That portion of the county of Bergen embracing North Arlington, that portion of the county of

Essex embracing Belleville, Bloomfield, Caldwell, Cedar Grove, Essex Fells, Fairfield, Livingston, Lyndhurst, Maplewood, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange, that portion of the county of Hudson, embracing East Newark, Kearny and Secaucus, that portion of the county of Morris embracing East Hanover, Mountain Lakes and Parsippany-Troy Hills, and that portion of the county of Passaic embracing Little Falls, Totowa and West Paterson.

Twelfth. That portion of the county of Essex embracing Millburn, that portion of the county of Hunterdon embracing Califon, Clinton, Clinton township, Glen Gardner, High Bridge, Lebanon, Lebanon township, Readington and Tewksbury, that portion of the county of Morris embracing Chatham, Chatham township, Chester, Chester township, Florham Park, Hanover, Harding, Madison, Mendham, Mendham township, Morris Plains, Morris township, Morristown, Netcong, Passaic and Washington, that portion of the county of Somerset embracing Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Green Brook, Hillsborough, Montgomery, Peapack-Gladstone, Raritan, Somerville, Warren and Watchung, that portion of the county of Sussex embracing Andover, Andover township, Byram, Franklin, Fredon, Green, Hamburg, Hardyston, Hopatcong, Newton, Ogdensburg, Sparta and Stanhope, that portion of the county of Union embracing Berkeley Heights, Kenilworth, Mountainside, New Providence, Springfield, Summit and Union township and that portion of the county of Warren embracing Allamuchy, Frelinghuysen, Independence and Mansfield.

Thirteenth. That portion of the county of Burlington embracing Eastampton, Evesham, Hainesport, Lumberton, Medford Lakes, Medford, Moorestown, Mount Holly, Mount Laurel, New Hanover, North Hanover, Shamong, Southampton, Westhampton and Woodland, that portion

of the county of Ocean embracing Beachwood, Berkeley, Dover, Island Heights, Jackson, Lacey, Lakehurst, Lavallette, Ocean Gate, Pine Beach, Plumsted, Seaside Heights, Seaside Park, South Toms River and Manchester, that portion of the county of Monmouth embracing Brielle, Colts Neck, Farmingdale, Holmdel, Howell, Little Silver, Rumson, Shrewsbury, Shrewsbury township, Tinton Falls and Wall and that portion of the county of Camden embracing Cherry Hill, Collingswood, Haddon, Lawnside and Oaklyn.

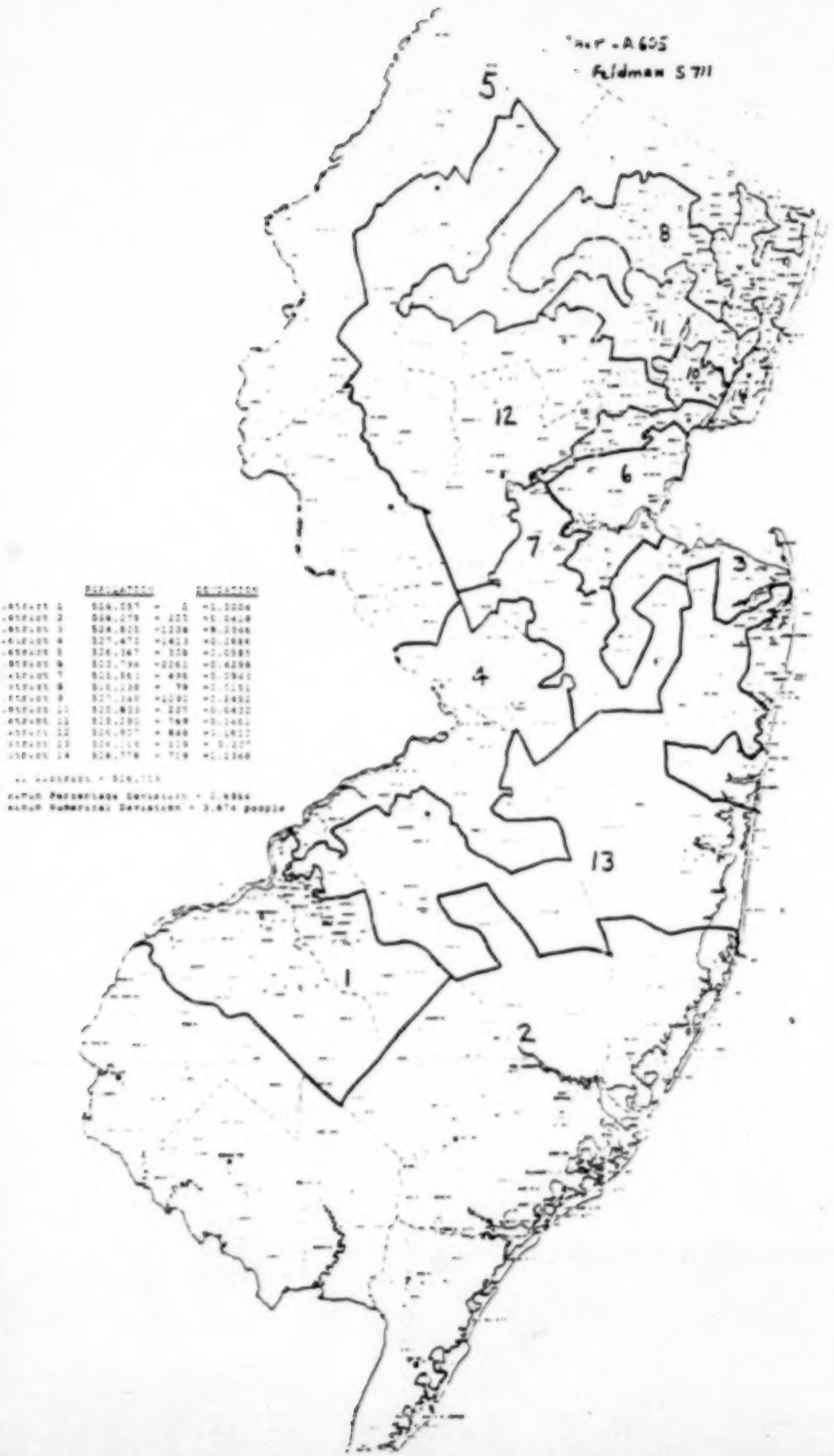
Fourteenth. That portion of the county of Bergen embracing Little Ferry, Palisades Park and Ridgefield and that portion of the county of Hudson embracing Bayonne, Guttenberg, Hoboken, Jersey City, North Bergen, Union city, Weehawken and West New York.

3. Sections 1 and 2 of P.L. 1966, c. 156 (C. 19:46-2 and 19:46-3) and P.L. 1981, c. 561 are repealed.

4. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to create 14 Congressional Districts for use beginning with the 98th Congress.


Kaufman A605
Feldman S711
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APPENDIX B

[SEAL]

GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

SPEAKER
CHRISTOPHER J. JACKMAN
Assemblyman, District 33
(Hudson)
4110 Monitor Place
West New York, N.J. 07043

Res. 201-868-2637
Bus. 201-861-0961
Leg. Off. 201-861-7266

August 28, 1981

Ernest C. Reock, Jr.
Director
Bureau of Government Research
Rutgers University
New Brunswick, New Jersey 08403

Dear Mr. Reock:

I recently received your letter and plan for New Jersey Congressional districts. I want to thank you for the time and effort you put into your paper. As a principle in the process which will decide New Jersey's Congressional boundaries for the next decade, I have taken this opportunity to respond to your report.

After reading your report I am struck by the suggestion that adherence to the criteria in your report will produce one and only one "fair" map. A further suggestion that this single map then serve as the standard against which all other plans be measured seems to me somewhat presumptious. In fact I am certain that no

single scientifically developed blueprint can be applied in the case of Congressional Apportionment. It is clear that a variety of proposed plans and possible approaches must be explored, all of which have merits as being fair.

Political fairness as it applies to Congressional redistricting is an illusive concept which as you know is often used as a smokescreen for partisan political advantage. Redistricting is a process necessarily comprised of many diverse interests and subjective judgements. Just as several doctors evaluating the same patient could offer several differing but valid opinions, so it is true that those who are directly involved in the apportionment process would be ill advised to set out in the preconceived notion that only one opinion or standard should be recognized. To call your redistricting plan "fair" in comparison to all other plans seems little more than an academic shell game.

In addition I am concerned that assertions about fairness and your urging about establishing standards without recognition of the political process may deny the very real political nature of apportionment. Congressional redistricting is a matter taken up by the entire Legislature. Legislators are elected as members of parties. Those legislators and their parties represent communities of interest which bind members together. Political parties serve to form governing coalitions, without which politics would be in total chaos. The strength of the party-system depends on many varied and quite intricate relationships. As such, the issues inherent in apportionment have come to be defined by parties, negotiated by parties and ultimately solved by parties.

The Federal Courts have utilized very definable features in judging the comparative merits of Congressional apportionment plans. You discuss in your paper the requirements for districts that are contiguous and compact, which do not divide municipalities and adhere to county boundaries wherever possible, which recognize shifts in

populations from older to new communities, and which take into account the previous districts which are being changed. You also recognize that these factors are often in competition with each other and that a sense of priority must be attached to these criteria. When two or more criteria are at odds how should decisions be made? Although we must resort to guessing at judicial intentions, it is regrettable that such decision criteria were not included in your report. While you adequately explain that your proposal does meet judicial standards you do not engage in the more technical discussion of why this plan is better than other possible plans. Statements alluding to its superiority are left unsubstantiated.

In addition to the definable and perhaps measurable criteria by which you drew your plan, apportionment is a political process. No apologies need be made for interests which exist and the pressures which bear upon those who are burdened with the decisions of apportionment. Although you are obviously quite well versed in redistricting law and history, your paper is silent on the important role of community-level politics in apportionment decisions. It is perhaps the process within which Congressional redistricting occurs which dictates its outcome. Without changing the prescribed apportionment process in New Jersey and in other states, it is unlikely that your plan has any chance of adoption. With this in mind, as I'm sure you are aware, it is difficult to understand how you expect legislative action to coincide with your views of the "fairest" plan possible. Why, indeed did you concentrate on alternatives for the solution without even mentioning the political process through which it must pass?

With this in mind, it may be useful to examine the redistricting process and the context within which the New Jersey legislative takes up the issue.

Here in New Jersey the Democratic Party has control over the Congressional apportionment process for the first time ever. This occurs, as you know, because Democrats

hold a majority in both houses of the legislature, as well as being represented in the Governor's seat. Ten years ago, and during every Congressional redistricting in New Jersey's history, Republicans played the predominant role. Each time Republicans sought to legislate districts which would maximize their representation in Congress. And each time Republicans drew districts which were intended to improve upon the previous partisan Congressional representation.

Well, an interesting thing happened along the way—as I'm sure you are aware: the Democratic Party became the dominant party in New Jersey; the party considered more representative of the needs and wishes of New Jersey voters. In the last ten years—under a court-ordered adaptation of a Republican plan—Democratic Congressional candidates have overwhelmingly been the choice of the voters. In those years Democrats have never held less than 8 of the 15 Congressional districts and as many [as] 12. Furthermore, Democratic electoral dominance over the past decade can be established by reviewing the party representation amongst the major political offices. Over the period in which the current districts have been in place, Democrats have dominated the State House at all levels, represent the bulk of the Congressional delegation, and now represent both United States Senators.

The political analysis used to justify your plan employs election results from 1979 and 1980 only. It is my estimation that in determining the best plan for Congressional districts—districts that will be in place for the next ten years—election results from the previous ten years should be taken into account. Of course, more recent elections may be given more weight, but not to the total exclusion of other election data. From my point of view, the 1980 election results are not entirely indicative of the state of partisan politics in New Jersey. There is no doubt that the Democratic party under the leadership of Jim Florio, our gubernatorial candidate, will continue

to enjoy great success amongst the voters of New Jersey. Our representatives in Congress should, as closely as possible, parallel the sentiments of New Jersey voters.

It is in fact interesting that you make use of past election data in defining the expected partisan makeup of your plan. As I'm sure you are aware, others who have made suggestions as to the improvement of political fairness in the apportionment process, tend to shun the use of such political information, perhaps exclude it altogether. Nonetheless, since you have reviewed past election data you must surely expect all others involved in this process to do likewise. Given the process by which the Legislature decides upon a plan how can you expect members of the Legislature to ignore election data which would perhaps lead to other Congressional district configurations more beneficial to party members? You in essence are asking Democrats to subjugate their interests and in effect ignore political election results in order to accommodate your opinions on the "ideal" apportionment plan.

Congressional redistricting in New Jersey must also be viewed from the more broad-based national perspective. The Republican party is only 27 votes short of absolute control of Congress. With a shift of population and consequently Congressional seats from the traditionally Democratic urban industrial states to the more Republican dominated sun-belt states the redistricting process is viewed by Republicans as an opportunity to close that 27 vote margin, or perhaps even overcome it entirely. Toward this end the Republican National Committee (RNC) has undertaken a widely publicized and well-financed redistricting program. Their strategy, as the following examples illustrate is to maximize the Republican potential in those states where they control the process and attack the Democrats as politically unfair in those states in which the Democrats are involved.

Indiana is a state where the Republican party holds a majority in both houses of the Legislature as well as

being represented in the Governor's office. A state tailor-made for the RNC strategy, they sent in a team of technical advisors and managed a bill through the Legislature which was later signed into law by the Governor. By packing all the available Democratic population into the three already heavily Democratic districts and dividing the remaining Democratic population amongst several otherwise Republican districts they hope to see the Congressional delegation change dramatically. From a current delegation of 6 Democrats and 5 Republicans the new redistricting plan intends to dump 3 Democrats, thus returning a delegation of 3 Democrats and 7 Republicans to Congress next year. (Indiana like New Jersey loses one seat next year.)

Republicans also saw a great opportunity in Washington State, where they dominate the apportionment process at all levels. Following closely on their tremendous "success" in Indiana, Republicans rammed a redistricting plan through the Legislature in April. The plan intended to change the Congressional delegation from 5 Democrats and 2 Republicans to perhaps only 3 Democrats and 5 Republicans. (Washington gains an additional seat.) Republican Governor Spellman vetoed the plan, however, as too extreme. The next effort will not be made until later this year.

In Colorado the Republicans who control both houses of the Legislature must contend with Democratic Governor Richard Lamm on redistricting. The Republicans have already passed and the Governor has vetoed two plans which are intended to shift the Congressional delegation from the current 3 Democrats and 2 Republicans to 1 Democrat and 5 Republicans. (Colorado gains a seat.) The Republicans have now countered with nearly a half million dollar TV advertising blitz aimed at discrediting Lamm as playing partisan politics—in essence being politically unfair. Without going into great detail over what the Colorado Republicans have in mind you can see that the Democrats are up against heretofore unheard

of tactics in the battleground of Congressional redistricting.

Against heavy odds, in the person of a popular and powerful President and the fundraising and organizational capability he represents, Democrats are wary of partisan politics. Democrats, even when successful are often on the defensive and appear open to just those media-hyped "fairness" arguments put forth in your work. The fact of the matter is that I feel very strongly that your Congressional redistricting plan is little more than an academic statement of *your* views of the desired outcome. Perhaps unwittingly, you play into Republican strategies quite well. Of course Republican spokesmen will deny any involvement or perhaps interest in your plan. But you can bet that in response to whatever Democrats propose, Republicans will be quick to embrace the "fair" Reock alternative. Political posturing of this nature is expected, but should be taken only for the rhetoric it represents.

Having said all this, I would like to add that in no way do I discourage input such as yours into a very complicated, sometimes unwieldy political process. In fact your expertise has been and I'm sure will continue to be of inordinate value to those of us in New Jersey government. It is a measure with which I take the seriousness of your work that such a lengthy response seems in order.

Once again I thank you for the time and effort you have given the issue of Congressional redistricting in New Jersey.

Sincerely,

/s/ Christoper J. Jackman
CHRISTOPHER J. JACKMAN,
Speaker

cc: Honorable Brendan Byrne
Democratic Legislators
Democratic Congressmen

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Hon. JOHN J. GIBBONS

Hon. CLARKSON S. FISHER

Hon. STANLEY S. BROTMAN

Civil Action No. 82-297

GEORGE T. DAGGETT,

Complainant,

—vs—

IRWIN I. KIMMELMAN, Attorney General of the State of New Jersey, JANE BURGIO, Secretary of State of the State of New Jersey, CARMEN A. ORECHIO, President of the Senate of the State of New Jersey, and ALAN J. KARCHER, Speaker of the General Assembly of the State of New Jersey,

Defendants,

—and—

Civil Action No. 82-388

EDWIN B. FORSYTHE, MATTHEW J. RINALDO, MILLICENT FENWICK, HAROLD C. HOLLENBECK, JAMES A. COURTER, MARGARET S. ROUKEMA, CHRISTOPHER H. SMITH, THOMAS DUNN, LIVIO MANCINO, REV. MILLARD D. BIRT, RAFAEL FAJARDO, MARGARET DOUGHERTY, MARETT N. JACKSON, and C. JOSEPH LILLO,

Plaintiffs,

—vs—

THOMAS H. KEAN, as Governor of the State of New Jersey, IRWIN KIMMELMAN, as Attorney General

JAMES J. FLORIO, WILLIAM J. HUGHES, JAMES J. HOWARD, ROBERT A. ROE, PETER W. RODINO, JR., JOSEPH G. MINISH, FRANK J. GUARINI, and BERNARD J. DWYER,
Defendants-Intervenors,

CARMINE A. ORECHIO, President of the New Jersey Senate, and ALAN J. KARCHER, Speaker of the New Jersey General Assembly,
Defendants-Intervenors,

of the State of New Jersey, and JANE BURGIO, as Secretary of State of the State of New Jersey,
Defendants.

[Filed Mar. 8, 1982]

JUDGMENT

This matter having been heard by the three-judge Court on February 19 and 26, 1982, and plaintiffs' applications for preliminary and permanent injunctive relief having been consolidated pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, and the Court having considered the proofs adduced by the original and intervening parties and the oral argument and submission of counsel, and the Court having filed its written opinion on March 3, 1982, and good cause appearing therefor,

IT IS, this 8th day of March, 1982

ORDERED, ADJUDGED AND DECREED that judgment be, and it hereby is, entered in favor of plaintiffs and against defendants and defendants-intervenors as provided herein; and it is further

ORDERED, ADJUDGED AND DECREED that that apportionment of congressional districts constituted by this Court in *David v. Cahill* be, and it hereby is, declared unconstitutional in light of the 1980 decennial census; and it is further

ORDERED, ADJUDGED AND DECREED that P.L. 1982, c.1 of the State of New Jersey be, and it hereby is, declared unconstitutional as violative of plaintiffs' rights under Article I, § 2 of the Constitution of the United States; and it is further

ORDERED, ADJUDGED AND DECREED that defendants Thomas H. Kean, Irwin Kimmelman and Jane Burgio be, and they hereby are, preliminarily and permanently enjoined from conducting primary or general congressional elections under the terms of P.L. 1982, c.1; and it is further

ORDERED, ADJUDGED AND DECREED that all counterclaims and crossclaims asserted by the intervenors herein be, and they hereby are, dismissed; and it is further

ORDERED, ADJUDGED AND DECREED that the New Jersey Legislature and Governor be, and they hereby are granted until March 22, 1982 to enact a new constitutional plan for reapportionment; and it is further

ORDERED, ADJUDGED AND DECREED that if the Legislature does not enact a new constitutional plan by March 22, 1982, this Court will convene on March 26, 1982 to undertake further proceedings; and it is further

ORDERED, ADJUDGED AND DECREED that this Court will, upon motion of any party to this action returnable on March 26, 1982 rule on the constitutionality of any enacted new reapportionment plan.

HON. JOHN J. GIBBONS
/s/ Clarkson S. Fisher
HON. CLARKSON S. FISHER
Chief Judge U.S.D.J.

HON. STANLEY S. BROTMAN
U.S.D.J.

Defendants-intervenors Florio, et al., Karcher, and Orechio having applied for a stay of the Court's Judgment, on March 8, 1982, and plaintiffs Forsythe, et al and defendants Kean, Kimmelman and Burgio having appeared in opposition thereto, and for the reasons set forth in that transcript of March 8, 1982, and good cause appearing, therefor,

It is on this 8th day of March, 1982

ORDERED that the application for a stay of the Court's Judgment be, and it hereby is, denied.

John J. Gibbons
HON. JOHN J. GIBBONS
U.S.C.J.

/s/ Clarkson S. Fisher
HON. CLARKSON S. FISHER
Chief Judge U.S.D.J.

HON. STANLEY S. BROTMAN
U.S.D.J.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HON. JOHN J. GIBBONS, United States Circuit Judge,
Court of Appeals for the Third Circuit

HON. CLARKSON S. FISHER, Judge United States
District Court, District of New Jersey

HON. STANLEY S. BROTMAN, Judge United States
District Court, District of New Jersey

Civil Action No. 82-297

GEORGE T. DAGGETT,
Plaintiff,

—VS—

IRWIN I. KIMMELMAN, Attorney General
of the State of New Jersey, *et al.*,
Defendants,

—and—

Civil Action No. 82-388

EDWIN B. FORSYTHE, *et al.*,
Plaintiffs,

—VS—

THOMAS H. KEAN, as Governor of
the State of New Jersey, *et al.*,
Defendants,

JAMES J. FLORIO, *et al.*,
Defendant-Intervenors.

NOTICE OF APPEAL

Defendant-Intervenors Carmen A. Orechio, President of the New Jersey Senate, Alan J. Karcher, Speaker of the New Jersey Assembly, and James J. Florio, et al., congressional defendants, do hereby, through their counsel appeal the decision of the Court holding P.L. 1982,

c.1 unconstitutional and enjoining the holding of any primary or general elections pursuant to its provisions.

Respectfully submitted,

/s/ Leon J. Sokol
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/s/ Lawrence T. Maranari
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Attorneys for
Defendant-Intervenors
James J. Florio, et al.
Attorneys for
Defendant-Intervenors

Dated: March 8, 1982

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. A-783

ALAN J. KARCHER, SPEAKER,
NEW JERSEY ASSEMBLY, ET AL.

v.

GEORGE T. DAGGETT, ET AL.

ON APPLICATION FOR STAY

[March 15, 1982]

JUSTICE BRENNAN, Circuit Judge.

Applicants, the Speaker of the New Jersey Assembly, the President of the New Jersey Senate, and eight Members of the United States House of Representatives from New Jersey, have applied to me for a stay pending this Court's review on appeal of the judgment of a three-judge District Court for the District of New Jersey entered March 3, 1982. The judgment declared unconstitutional New Jersey P. L. 1982, c. 1, which creates districts for the election of the United States Representatives from New Jersey, and enjoined the defendant state officers from conducting primary or general congressional elections under the terms of that statute.

On the basis of the 1980 decennial census, the number of United States Representatives to which New Jersey is entitled has been decreased from fifteen to fourteen. Consequently the New Jersey legislature was required to apportion fourteen congressional districts. P.L. 1982, c. 1

is the product of the state legislature's effort to meet that requirement. The District Court found that in drafting P.L. 1982, c. 1, the legislature was concerned not only with drawing districts of equal population as an "aspirational" goal but also with recognizing such factors as the preservation of the cores of preexisting districts, the preservation of municipal boundary lines, and the preservation of the districts of incumbent Democratic Congressmen. P.L. 1982, c. 1 creates 14 congressional districts with an overall absolute range of deviation of 3674 people and an overall relative range of deviation of 0.6984% from the "ideal" of 14 districts of 526,059 persons each. There were, however, several other proposals brought before the legislature that yielded total deviations less than 0.6984%. The opinion for the majority of the District Court says of these:

> "For example, the Roeck plan contained a total deviation of .3250%, and only .2960% after it was amended. The DiFrancesco plan . . . had a total deviation of .1253%. The Hardwick plan . . . contained a total deviation of .4515%. The Bennett plan . . . and the Kavanaugh plan . . . contain total deviations of .1369% and .0293% respectively."

All three judges of the District Court agreed that the constitutionality of P.L. 1982, c. 1 was to be determined under the standard announced in *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), and its progeny, *e.g.*, *White* v. *Weiser*, 412 U.S. 783 (1973). But the judges divided 2 to 1 on what that standard is. The majority read *Kirkpatrick* as holding that, even if .6984% was to be regarded as a *de minimis* variance,

> "P.L. 1982, c. 1 can withstand constitutional attack only if the population variances 'are unavoidable despite a good-faith effort to achieve absolute equality . . . .' *Kirkpatrick*, 394 U.S. at 531. It is clear that the .6984% population deviation of P.L. 1982,

> c. 1 is not unavoidable. The legislature had the option of choosing from several other plans with a lower total deviation than .6984%."

The dissenting judge, on the other hand, read *Kirkpatrick* to suggest:

> "[V]ariances may be justified which do not achieve statistically significant dilutions of the relative representation of voters in larger districts when compared with that of voters in smaller districts . . . . [*Kirkpatrick* is to be read to announce] a prohibition against toleration of *de minimis* dilutions of relative representation rather than as a prohibition against toleration of *de minimis* population variances which have no statistically relevant effect on relative representation. A plus-minus deviation of 0.6984% falls within the latter category."

The appeal would thus appear to present the important question whether *Kirkpatrick* v. *Preisler* requires adoption of the plan that achieves the most precise mathematical exactitude, or whether *Kirkpatrick* left some latitude for the New Jersey legislature to recognize the considerations taken into account by it as a basis for choosing among several plans, each with arguably "statistically insignificant" variances from the constitutional ideal of absolute precision.

The principles that control my determination as Circuit Justice of this in-chambers application were stated in *Rostker* v. *Goldberg*, 448 U.S. 1306 (1980) (BRENNAN, J., in chambers):

> "Relief from a single Justice is appropriate only in those extraordinary cases where the applicant is able to rebut the presumption that the decisions below—both on the merits and on the proper interim disposition of the case—are correct. In a case like the present one, this can be accomplished only if a

> four-part showing is made. First, it must be established that there is a 'reasonable probability' that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction. Second, the applicant must persuade [the Circuit Justice] that there is a fair prospect that a majority of the Court will conclude that the decision below was erroneous. While related to the first inquiry, this question may involve somewhat different considerations, especially in cases presented on direct appeal. Third, there must be a demonstration that irreparable harm is likely to result from the denial of a stay. And fourth, in a close case it may be appropriate to 'balance the equities'—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Id.*, at 1308 (citations omitted).

The importance of a definitive answer from this Court as to the proper interpretation of the *Kirkpatrick* standard is self-evident: Doubtless all 50 states would be assisted by that answer in any review of the apportionment of congressional seats in consequence of the 1980 census. My task is not to adjudicate this application on my own view of the merits of that question, but rather to determine whether there is a "reasonable probability" that four Justices will consider the issue sufficiently meritorious to note probable jurisdiction of this appeal, and, if so, whether there is a fair prospect that a majority of the Court will conclude that the decision below was erroneous. Neither event can be predicted with anything approaching certainty, but nonetheless it does seem to me that there is a reasonable probability that jurisdiction of the appeal will be noted, and that there is a fair prospect of reversal.

As to the third *Rostker* requirement, I conclude that appellants would plainly suffer irreparable harm were the stay not granted. Under the District Court order the

Legislature must either adopt an alternative redistricting plan before March 22 next or face the prospect the District Court will implement its own redistricting plan. With respect to the balance of the equities, this Court has repeatedly emphasized that legislative apportionment plans are to be preferred to judically constructed plans.

Accordingly, I am today entering an order granting appellants' application for a stay pending the filing of a jurisdictional statement and, if probable jurisdiction is noted, final disposition of the appeal.

SUPREME COURT OF THE UNITED STATES

No. A-783

ALAN J. KARCHER, SPEAKER,
NEW JERSEY ASSEMBLY, ET AL.,
Appellants,
v.
GEORGE T. DAGGETT, ET AL.

ORDER

UPON FURTHER CONSIDERATION of the application of counsel for the appellants and the responses filed thereto,

IT IS ORDERED that the order of the United States District Court for the District of New Jersey, case Nos. 82-297 and 82-388, entered on March 3, 1982 be, and the same is hereby, stayed pending the timely docketing of an appeal in the above-entitled cause. Should such an appeal be so timely docketed, this order is to continue pending this Court's action on the jurisdictional statement. If the appeal is dismissed or the judgment of the United States District Court for the District of New Jersey is affirmed, this order is to terminate automatically. In the event that jurisdiction is noted or postponed, this order is to remain in effect pending the sending down of the judgment of this Court.

/s/ William J. Brennan, Jr.,
Associate Justice of the Supreme
Court of the United States

Dated this 15th day
of March, 1982.

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-783

ALAN J. KARCHER, SPEAKER,
NEW JERSEY ASSEMBLY, ET AL.,
Appellants,

v.

GEORGE T. DAGGETT, ET AL.

ON CONSIDERATION of the motion of appellees to vacate the stay entered by Justice Brennan on March 15, 1982 and the requests to expedite docketing of the appeal,

IT IS ORDERED by this Court that the said motion and requests be, and the same are hereby, denied.

March 29, 1982

APPENDIX F

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
Washington, D.C. 20543

April 14, 1982

Jonathan L. Goldstein, Esq.
Hellring, Lindeman, et al.
1180 Raymond Boulevard
Newark, New Jersey 07102

RE: Alan J. Karcher, Speaker,
New Jersey Assembly, et al. v.
George T. Daggett, et al.
A-783

Dear Mr. Goldstein:

Your application to modify stay in the above-entitled case, together with the response filed thereto, has been presented to Justice Brennan. Justice Brennan has endorsed the following on the face of your application:

"Denied
Wm. J. Brennan, Jr.
4/13/82"

Very truly yours,

ALEXANDER L. STEVAS
Clerk
By

KATHERINE DOWNS
Assistant Clerk

rwk
cc: Kenneth J. Guido, Jr., Esq.
Michael R. Cole, Esq.
George T. Daggett, Esq.